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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,324

09/30/2003

Gregg A. Deluga

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12/11/2006

MUETING, RAASCH & GEBHARDT, P.A.

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EXAMINER

WARTALOWICZ, PAUL A

ART UNIT

PAPER NUMBER

1754

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/676,324	Applicant(s) DELUGA ET AL.	
Examiner Paul A. Wartalowicz	Art Unit 1754	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Paul Wartalowicz
Paul Wartalowicz
11/28/06

Stanley S. Silverman
STANLEY S. SILVERMAN
SUPERVISORY PATENT EXAMINER
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Continuation of 11)

Applicant's arguments filed 10/12/06 have been fully considered but they are not persuasive.

Applicant argues that the provisional application has support for the amendment "forming a film of a composition...on a wall of a reactor; and vaporizing the composition;" and "forming a film of the feed gas on a wall of a reactor; and vaporizing the feed gas." and that for example the paragraph on page four of the provisional application cited in conjunction with figure 2 illustrates the formation of "a thin film on a wall of a reactor".


However, this argument is not persuasive for at least the following reasons. First, regarding the cited paragraph: the citation from the provisional application describes a permissible apparatus used in the method of the invention. There is no teaching or suggestion that this apparatus describes the invention of the applicant; the recitation "typical apparatus" would lead one of ordinary skill to believe that this is a suitable prior art apparatus and not the applicant's invention regarding the method.

Second, regarding the figure: There is no evidence that a thin film is formed on the apparatus, as it is in presently the claimed method. Further, there is no evidence that the spray forms the film on the surface of the reactor. The "thin film" on the figure is not correlated with any method limitations in the provisional application.

In conclusion, there is no language or teaching in the provisional application that describes "forming a film of a composition...on a wall of a reactor; and vaporizing the composition;" and "forming a film of the feed gas on a wall of a reactor; and vaporizing

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the feed gas." The presently claimed invention does not receive benefit of the date of the provisional application because there is no support in the provisional applications for the amendments. Therefore, Krummenacher et al. qualifies as prior art.


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